United States of America
Before The National Labor Relations Board

In the Matter of: United Nurses & Allied Professionals, (Kent Hospital), Respondent, And Jeanette Geary, An Individual, Charging Party.	Case 1-CB-11135

RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRTIVE LAW JUDGE

Respectfully submitted,

The United Nurses & Allied Professionals

By its attorney,

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Pursuant to the Rules and Regulations of the National Labor Relations Board, Section 102.46(b)(1), Respondent, United Nurses & Allied Professionals (UNAP), hereby files the following exceptions to the Administrative Law Judge's conclusions of law in the above captioned case:

1. The UNAP takes exception with the Judge's conclusion of law as set forth on page 7 of his Decision, ¶3(a) which reads: "(t)he Union violated Section 8(b)(1)(A) of the Act by charging objecting nonmembers of the Union for lobbying activities involving the following bills before the states of Rhode Island and Vermont: Bill Relating to Public Officers and Employees-Retirement System-Contributions and Benefits (Jt. Ex. 7)."

2. The UNAP takes exception with the Judge's conclusion of law as set forth on page 7 of his Decision, ¶3(b) which reads: "(t)he Union violated Section 8(b)(1)(A) of the Act by charging objecting nonmembers of the Union for lobbying activities involving the following bills before the states of Rhode Island and Vermont: Bill Relating to Health and Safety-Center for Health Professionals Act (Jt. Ex. 11)."

3. The UNAP takes exception with the Judge's conclusion of law as set forth on page 7 of his Decision, ¶3(d) which reads: "(t)he Union violated Section 8(b)(1)(A) of the Act by charging objecting nonmembers of the Union for lobbying activities involving the following bills before the states of Rhode Island and Vermont: The

bills before the Vermont legislature that would have required certain hospitals to purchase equipment to assist employees in lifting and moving patients, and to prohibit certain mandatory overtime work for certain health care employees."

The portions of the record relied upon by the UNAP in support of its exceptions and the grounds upon which the exceptions are based are set forth in detail in the UNAP's brief in support of its exceptions to the Decision of the Administrative Law Judge, which accompanies these exceptions.

CERTIFICATION OF SERVICE

I hereby certify that a copy of this brief was sent overnight mail to the Board's Office of the Executive Secretary at 1099 14th Street, N.W., Washington, D.C. 20570, by certified mail to Mr. Donald Firenze at Region 1 of the National Labor Relations Board, 10 Causeway Street, 6th floor, Boston, MA 02222-1072, and by certified mail to Mr. Mathew Muggeridge of the National Right to Work Defense Foundation at 8001 Braddock Road, Suite 600, Springfield, VA 22160, on April 26, 2011.

Betty Wheeler

Betty Wheeler, UNAP Office Manager

United States of America
Before The National Labor Relations Board

In the Matter of:	
United Nurses & Allied Professionals, (Kent Hospital),	
Respondent,	Case 1-CB-11135
And	
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BRIEF IN SUPPORT OF THE UNITED NURSES & ALLIED PROFESSIONALS' EXCEPTIONS TO THE DECISION OF THE ADMINISTRTIVE LAW JUDGE

Respectfully submitted,

The United Nurses & Allied Professionals

By its attorney,

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Statement of the Case

Pursuant to the Rules and Regulations of the National Labor Relations Board, Section 102.46(c)(1), the United Nurses & Allied Professionals (UNAP) offers the following statement of the case.

The original unfair labor practice charge in the instant case was filed with Region 1 of the National Labor Relations Board on or about November 23, 2009. GC-1(a). The first amended unfair labor practice charge was filed on May 27, 2010. GC-1(c). The original complaint and notice of hearing was issued on June 30, 2010. GC-1(e). The UNAP filed an answer to the original complaint and notice of hearing on July 12, 2010. GC-1(g). An amended complaint and notice of hearing was issued on December 29, 2010. GC-1(j). The UNAP filed an answer to the amended complaint and notice of hearing on January 11, 2011. GC-1(l).

The gravamen of the amended complaint is that the UNAP violated the Act by charging *Beck* objectors at Kent Hospital for lobbying expenses that were non-representational in nature, Amended Complaint at ¶10, and by failing to provide those same objectors with evidence beyond a mere assertion that the financial disclosure provided by the UNAP[1] was based on an independently verified audit. Amended Complaint at ¶9(c). With respect to the lobbying expenses, in issue and before the Judge were four (4) bills the UNAP lobbied in support of in the state of Rhode Island, two (2) bills the UNAP lobbied in support of in the state of Vermont, and mental health care funding for which the UNAP lobbied in support of in the state of Vermont.

[1] The disclosure is in evidence and marked as Jt. Ex. 2.

On February 14, 2011, the instant case was heard by the Honorable Joel P. Biblowitz, Administrative Law Judge. The Administrative Law Judge rendered his decision on March 30, 2011. The Judge concluded that the lobbying expenses in Rhode Island that were related to the Hospital Merger Accountability Act[2] and the Hospital Payments Act[3] "were germane to the Union's duty as the collective bargaining representative [ ] and are therefore properly chargeable to the objecting nonmembers." Decision at 6. Similarly, the Judge concluded that the lobbying expenses related to mental health care funding in Vermont were "germane and chargeable." Id. However, the Judge concluded that the lobbying expenses in Rhode Island that were related to the retirement system bill[4] and the nursing shortage bill[5] "were not germane to the Union's collective bargaining obligations and were therefore not chargeable to the objecting nonmembers." Id. Similarly, the Judge concluded that the lobbying expenses in Vermont that were related to the safe patient handling bill[6] and the mandatory overtime bill[7] were "not germane to collective bargaining and [were] not chargeable to the objecting nonmembers." Id.

The UNAP, pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board hereby files exceptions to the Judge's rulings, findings, conclusions and recommendations regarding the retirement system bill, the nursing shortage bill, the safe patient handling bill and the mandatory overtime bill, as set forth on page 7 of his Decision, ¶¶3(a), (b) and (d).

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[2] This bill is in evidence and marked as Jt. Ex. 6.
[3] This bill is in evidence and marked as Jt. Ex. 12.
[4] This bill is in evidence and marked as Jt. Ex. 7.
[5] This bill is in evidence and marked as Jt. Ex. 11.
[6] This bill is in evidence and marked as Jt. Ex. 13.
[7] This bill is in evidence and marked as Jt. Ex. 14.

Issues Presented

Pursuant to the Rules and Regulations of the National Labor Relations Board, Section 102.46(c)(2), the UNAP raises the following issues for argument: 1) whether the Judge erred in concluding in ¶3(a) of his conclusions of law that the UNAP violated the Act by charging objecting non-members for lobbying activities in the state of Rhode Island in support of the retirement system bill, 2) whether the Judge erred in concluding in ¶3(b) of his conclusions of law that the UNAP violated the Act by charging objecting non-members for lobbying activities in the state of Rhode Island in support of the nursing shortage bill, and 3) whether the Judge erred in concluding in ¶3(d) of his conclusions of law that the UNAP violated the Act by charging objecting non-members for lobbying activities in the state of Vermont in support of the safe patient handling bill and the mandatory overtime bill.

Argument

Pursuant to the Rules and Regulations of the National Labor Relations Board, Section 102.46(c)(3), the UNAP offers the following argument for the Board's consideration.

I. Standard of Review

In the instance case, counsel for the Acting General Counsel complains that the UNAP violated the Act by charging the objectors at Kent Hospital for expenses incurred while lobbying; activity the Acting General Counsel argues is nonrepresentational in nature. Amended Complaint at ¶10. Some of the lobbying activity in issue was

undertaken by the UNAP on behalf of Kent Hospital bargaining unit employees.[8] Some was undertaken on behalf of bargaining unit employees in bargaining units other than the Kent Hospital unit.[9]

It is well settled that objectors may be charged for otherwise chargeable activities undertaken on behalf of bargaining unit employees in bargaining units other than their own: "[a] local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit." Lehnert v. Ferris Faculty Association, 500 U.S. 507, 508 (1991).

In Lehnert, nonmembers of the Ferris Faculty Association (FFA), an affiliate of the Michigan Education Association (MEA) and the National Education Association (NEA), were charged a service fee for activities related to negotiating and administering the collective bargaining agreement. The fee was paid to the FFA, the MEA and the NEA, Id. at 507, and was used, in part, to represent employees in bargaining units other than the FFA. Id. at 527. Nonmembers challenged the fee arguing that they could only be charged for those chargeable activities undertaken directly on behalf of their own bargaining unit. Id. at 522. The Supreme Court rejected this argument:

> "While we consistently have looked to whether nonideological expenses are germane to collective bargaining, **we have never interpreted that test to require a direct relationship between the expense at issue and some tangible benefit to the dissenters' bargaining unit.** We think that to require so close a connection would be to ignore the unified-membership structure under which

[8] For example, the lobbying the UNAP did in support of the Hospital Merger Accountability Act (Jt. Ex. 6) was done on behalf of the objectors' bargaining unit at Kent Hospital, (Tr. 47:1-10), as was the lobbying done in support of the Hospital Payments bill (Jt. Ex. 12). (Tr. 53:14-16).

[9] For example, some lobbying activity was undertaken by the UNAP on behalf of bargaining unit employees in bargaining units in the State of Vermont. (Tr. 21:16-22, 22:2-10).

> many unions, including those here, operate. Under such arrangements, membership in the local union constitutes membership in the state and national parent organizations. The essence of the affiliation relationship is the notion that the parent will bring to bear its often considerable economic, political, and informational resources when the local is in need of them. Consequently, **that part of the local's affiliation fee which contributes to the pool of resources potentially available to the local is assessed for the bargaining unit's protection, even if it is not actually expended on that unit in any particular year**." (emphasis added).

Id. at 522-523 (citations omitted). See also California Saw and Knife Works, 320 NLRB 224, 239 (1995)("(w)e shall accordingly apply the same standard for determining the chargeability of litigation expenses as we are required by *Beck* to apply to all other expenses – whether they are germane to the union's role in collective bargaining, contract administration, and grievance adjustment – regardless of whether the activities were performed for the direct benefit of the objector's bargaining unit."); Office & Professional Employees International Union, Local 29, AFL-CIO (Dameron Hospital Association) and Alexandria Stoppenbrink, 331 NLRB 48, 51 (2000)(union may properly charge objector's for extra-unit activities if such activities are germane to collective bargaining, contract administration and grievance adjustment, and are incurred for services that may ultimately inure to the benefit of the objector's unit by virtue of that unit's membership in the parent organization).

This is so where, as here, those activities are undertaken on behalf of employees in out-of-state bargaining units, see Locke v. Karass, 498 F.3d 49, 52 (1st Cir. 2007), even where, as here, those activities are undertaken on behalf of employees who work in different occupations and industries. See Otto v. Pennsylvania State Education Ass'n, 330 F.3d 125, 129 (3rd Cir. 2003). Indeed, the NLRB has flatly rejected the argument that objectors may not be charged for chargeable activities undertaken on behalf of

employees in different bargaining units, different professions, different industries and/or different states. See Communications Workers of America, AFL-CIO, Local 9403 (Pacific Bell) and Michael Lee Finerty, 322 NLRB 142 (1996).

There, the reduced fee charged to objectors did not vary according to bargaining unit or industry, even though the respondent union represented 2400 bargaining units throughout the United States and Canada, in several different industries including telecommunications, printing and publishing, healthcare and state and local government. Id.

At the trial level, the ALJ opined that it was "difficult to believe that Pacific Bell/Nevada Bell contract negotiations, involving telecommunications employees, would have any affect upon, or would be affected by, negotiations involving the Chicago Tribune Company typographical workers bargaining unit or a bargaining unit in the health care industry." Id. at 144. The Board, on review, rejected that view:

> "**the judge concluded that there can be no finding that representational costs, affecting one bargaining unit, will ultimately inure to the benefit of members of another bargaining unit** so as to permit (the Respondent) to allocate costs on a national, multiple industry basis without violating its duty of fair representation. **We disagree.**" (emphasis added).

Id.

Subsequent to the Court's decision in Lehnert, the First Circuit held that activities undertaken on behalf of employees of one bargaining unit nevertheless *enure to the benefit* of employees of another if such activities are funded through pooling arrangements incident to an affiliation relationship and are otherwise chargeable:

> "where the (activity) is funded through a pooling arrangement, the broader Lehnert definition of germaneness applies and **the affiliation relationship between the state or national union and the local unit will be sufficient to**

> **demonstrate that the expenditures will "enure to the benefit" of the local unit**; thus, in these situations, charges will be germane so long as the (activity) at issue relates to the bargaining process." (emphasis added).

Locke v. Karass, 498 F.3d 49, 66 (1st Cir. 2007). Put more succinctly, "where a unit enters a pooling arrangement, the pool itself provides a benefit to the local unit." Id. at 64. See also, Finerty v. NLRB, 113 F.3d 1288, 1292 (D.C. Cir. 1997)("It is indisputable that, by pooling its resources on a union-wide basis, a union, which is the bargaining representative of all of its members, provides some benefit to members of the various local unions)."

In 2009, the United States Supreme Court affirmed the First Circuit's decision in Locke. See Locke v. Karass, _ U.S. _, 129 S.Ct. 798 (2009). Addressing the affiliation fee in question, the Court concluded:

> "under our precedent the Constitution **permits including this element in the local's charge to nonmembers as long as (1) the subject matter of the (extra-local) litigation is of a kind that would be chargeable if the litigation were local** e.g., litigation appropriately related to collective bargaining rather than political activities, **and (2) the litigation charge is reciprocal in nature**, i.e., the contributing local reasonably expects other locals to contribute similarly to the national's resources used for costs of similar litigation on behalf of the contributing local if and when it takes place." (emphasis added).

Id. slip opinion at 2.

The common thread that runs through Lehnert and Locke is that nonmembers may be charged for activities that are undertaken on behalf of other employees in other bargaining units, in other states, in other occupations and/or industries 1) so long as those activities are otherwise chargeable, 2) so long as expenditures in that regard are made in the context of the kind of pooling arrangements described above.

Based on foregoing, the standard of review here is not to determine whether or not the lobbying activity undertaken by the UNAP was undertaken on behalf of the Kent

Hospital bargaining unit. Rather, the standard of review here is to determine whether or not the lobbying activity in issue is germane to collective bargaining and the kind of activity normally and reasonably undertaken by an exclusive bargaining agent to effectuate its duties as such. See Transport Workers of America, AFL-CIO, Local 525 (Johnson Controls World Services, Inc.), 329 NLRB 543, 560 (1999):

> "(w)ith respect to lobbying expenses ( ) **lobbying is not per se nonchargeable, ( ) the test is whether they are germane to collective bargaining, ( ), or supports activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative.**" (emphasis added).

(citing Communications Workers v. Beck, 487 U.S. 735, 745 (1988) and Ellis v. Railway Clerks, 466 U.S. 435, 448 (1984), quotations omitted).

II. The UNAP Pooling Arrangement

The material facts in the instant case are analogous to those presented in Lehnert and Locke. In Lehnert, the local association, the FFA, paid a service fee to its parent organizations, the MEA, and the NEA. Id. at 512-513. Those fees were pooled at that level but remained available to the local association if the need arose. Id. at 523. Part of the fee was used to fund extra-unit activities on behalf of bargaining unit employees in other states. Id. at 508-509. The Court held that objectors may be charged for otherwise chargeable activities even if such activities are not performed for the direct benefit of the objecting employee's bargaining unit. Id. at 524. Similarly, in Locke, a local union, the Maine State Employees Association (MSEA), paid an affiliation fee to its parent union, the Service Employees International Union (SEIU). Part of that fee, which was pooled at the SEIU level, was used to fund extra-unit litigation on behalf of employees in bargaining units in other states. Id. at 52. As in Lehnert, the Court in Locke held that

objectors may be charged for otherwise chargeable extra-unit litigation expenses. Id. at 66.

The UNAP maintains the very same type of pooling arrangement as was maintained by the respondent unions in Lehnert and Locke. UNAP is a federation of affiliated locals. (Tr. 31:19-20). There are approximately sixteen such locals.[10] R-1. Each local collects dues from each bargaining unit employee either through dues check off or direct pay. (Tr. 35:20-24). That revenue is collected by the local treasurer. (Tr. 35:24-35). In turn, each local pays a specific per capita amount to the UNAP as a condition of being an affiliate. (Tr. 35:2-8). The local treasurer makes these per capita payments to the UNAP on a monthly basis.[11] (Tr. 36:4-6). Those payments are then deposited into the UNAP general operating fund.[12] (Tr. 40:4-8). The general fund is then used to pay for programs and services undertaken on behalf of each affiliated local. (Tr. 40:11-13). For example, each affiliated local has a UNAP staff person assigned to it for the purpose of handling contract negotiations, grievance processing, representation at arbitration and participation in labor management meetings related to matters such as health plan administration. (Tr. 41:16-25, 42:1-22).

In some years, locals get back in services far more than they contribute in per capita payments. For example, that may occur in a year where a local has a difficult contract negotiation or a flurry of arbitration activity. In other years, the opposite may be true. (Tr. 42:23-25, 43:1-13). Notwithstanding, there is no limit to the amount a local

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[10] UNAP is not affiliated with either a national or international parent organization. (Tr. 32:25, 33:1-3).
[11] Using a per capita form, R-3, each local treasurer, after receiving the dues, tallies up the number of members who paid dues in a given month, multiplies that number by the per capita rate, arrives at a total and then submits the monthly per capita payment to the UNAP. (Tr. 38:3-19).
[12] By way of demonstration, Local 5202 made a per capita payment to the UNAP in July 2009 in the amount of $120.55. The total per capita payments from all of the affiliated locals that month was $2,138. R-2.

may draw from UNAP's general fund, nor does a local's right to draw from that fund ever stop. (Tr. 43:15-22). This is so even if a local draws more from the fund than it contributed in per capita payments, even if a local draws a disproportionate share compared to other locals. (Tr. 43:23-25, 44:1-3). In short, that's how the pooling arrangement works; all of the locals pool their resources with the UNAP and the UNAP then mobilizes those resources to support each local, large or small, when the need arises. (Tr. 44:4-12).

In the instant case, no UNAP local affiliate benefited more from the UNAP pooling arrangement in fiscal year FY 2009 than the Charging Party's bargaining unit. In FY 2009, while every other UNAP local affiliate paid per capita dues to the UNAP, R-2, Kent Hospital Local 5008 did not. (Tr. 112:8-10).[13] However, Local 5008 drew approximately $150,000 from the UNAP general fund for the purpose of organizing and representation.[14] (Tr. 113:1-8). That enormous subsidy, that enormous benefit, came directly from the UNAP's pool of financial resources, that is, the general fund. (Tr. 113:9-13). Indeed, the UNAP tapped its considerable economic resources on behalf of Kent Hospital Local 5008 when the Local was critically dependent upon them as contemplated in Lehnert. Lehnert, supra at 522-523. As such, the UNAP pooling arrangement in and of itself provided a benefit to the Kent Hospital bargaining unit that permitted the UNAP to charge employees in that unit for otherwise chargeable activities undertaken on behalf of employees in other bargaining units. Locke, supra at 66. See also, Otto v. Pennsylvania State Education Ass'n, 330 F.3d 125 [3rd Cir. 2003].

[13] In the UNAP, employees do not pay dues until a collective bargaining agreement is approved. Local 5008 did not reach approve a collective bargaining agreement unit FY 2010. (Tr. 112:12-18).
[14] For example, the UNAP was negotiating Local 5008's first contract between January of 2009 and July 3, 2009. (Tr. 105:25, 106:1-2).

In Otto, there was a pooling arrangement between the Shaler Area Education Association (SAEA), an affiliate of the Pennsylvania State Education Association (PSEA) and the National Education Association (NEA). Each represents education and healthcare professionals. Nonmembers paid fair share fees to SAEA, PSEA and NEA. Nonmembers of SAEA challenged the fees arguing that 1) they were used to cover costs associated with collective bargaining related litigation incurred on behalf of another bargaining unit, and 2) that the fees were available to all local affiliates even though some of those affiliates represented employees in different professions. Id. at 128-129. The Court held that the fees were chargeable noting that the pooling arrangement made financial resources available to the SAEA that it could not otherwise muster on its own:

> "even if a local union party to such an arrangement does not litigate in any given year, it still derives a tangible benefit from participating in an expense-pooling agreement: the availability of on-call resources greater than those it could muster individually."

Id. at 136.

The Court identified additional benefits incident to the pooling arrangement:

> "the pooling arrangement confers potential benefits on the plaintiffs. First, the arrangement generates economies of scale that redound to their benefit. Second, by spreading the costs of otherwise chargeable expenses over a pool of employees whose chargeable expense levels are not perfectly correlated with their own (i.e., healthcare professionals as well as education professionals), education professionals reduce their risk of being assessed unusually high chargeable expenses in any given year. Moreover, this pooling arrangement does not necessarily increase the dollar amount of chargeable expenses assessed to plaintiffs for any particular year. Just as education professionals are assessed for healthcare professionals' chargeable expenses, so too healthcare professionals are assessed for education professionals' chargeable expenses."

Id. at 140.

As noted above, Kent Hospital Local 5008 did not have a penny to contribute to its own organizing drive or the negotiation of its first contract. The Local didn't have any

funds because it was not required to collect dues from bargaining unit employees in FY 2009. (Tr. 112:8-14). The Local's activities with regard to organizing and negotiating the first contract were, therefore, entirely subsidized by the UNAP pooling arrangement, (Tr. 113:2-13), to which every other local affiliate, including the local affiliates in Vermont, contributed. R-2.

The *economy of scale* generated by the UNAP pooling arrangement clearly *redounded* to Local 5008's benefit in grand fashion in FY 2009. Again, in FY 2009, Kent Hospital Local 5008 did not pay a penny in per capita dues to the UNAP. (Tr. 112:8-10). However, Local 5008 drew approximately $150,000 from the UNAP general fund for the purpose of organizing and representation. (Tr. 113:1-8). Moreover, the UNAP pooling arrangement, which spreads the costs of chargeable expenses among all of UNAP's local affiliates, arguably reduces the risk that employees represented by Local 5008 will be assessed unusually high chargeable expenses in any given year.

Similarly, in Reese v. City of Columbus, 71 F.3d 619 (6th Cir. 1995), objectors paid a fair share fee to Local 1632, and its parent organizations, Ohio Council 8 and the American Federation of State, County and Municipal Employees International. Id. at 621. The fee was pooled. Id. at 623. The objectors alleged that they were unlawfully charged for, *inter alia*, extra-unit litigation expenses. Id. The Circuit Court noted that Ohio Council 8 employed staff that handled grievances, contract negotiations and contract enforcement for all of its affiliated locals when the need arose:

> "the district court determined that Ohio Council 8 provides legal services **to all affiliated local unions** on an as needed basis, and employed a staff of lawyers to handle such local union matters as grievance handling, enforcement of collective bargaining agreements, and negotiation of collective bargaining agreements." (emphasis added).

Id. The Circuit Court then went on to affirm the decision of the District Court, which held:

> "The record evidence shows that the litigation expenses of Ohio Council 8 are directly related to grievance handling, the enforcement of the collective bargaining agreement and negotiating collective bargaining agreements. In effect, the locals have pooled their resources at the council level in order to obtain legal services when needed [ ] the Court finds that defendants may properly include a pro rata share of Ohio Council 8's chargeable legal expenses as part of its fee."

Id. at 623.

Based on the foregoing, it is clear that UNAP's pooling arrangement provides a legally recognized benefit to the Charging Party. As such, otherwise chargeable activities undertaken on behalf of local affiliates other than Kent Hospital Local 5008, whether they be in Rhode Island or Vermont, on behalf of employees in professions other than registered nursing, or in industries other than healthcare, are chargeable to the Charging Party.

III. The Chargeability of the Lobbying Expenses in Vermont and Rhode Island

It is settled law that lobbying expenditures that are germane to collective bargaining and representational activities are chargeable. See Carpenters Local 751 (Largo Construction, Inc.), Advice Memorandum, Case 32-CB-5560-1 (2003):

> "**the Board has found that certain expenditures that might reasonably be characterized as** political action, such as legislative, executive, and administrative agency **lobbying, may be chargeable where they concern matters that are germane to collective bargaining and representational activities**." (emphasis added).

(citing Transport Workers of America, AFL-CIO, Local 525 (Johnson Controls World Services, Inc.), 329 NLRB 543 (1999)).

In Johnson Controls, the Transport Workers of America, AFL-CIO, Local 525, charged objectors for expenses incurred while lobbying on their behalf with regard to,

inter alia, payment of wages, overtime hours and employee safety. Id. at 549-550. The Administrative Law Judge held that such lobbying expenses were chargeable. Id. at 560. In so doing, he reasoned as follows:

> "**With respect to lobbying expenses** incurred by Respondents I am persuaded by the ( ) argument that **lobbying is not per se nonchargeable**, and that **the test is whether they are germane to collective bargaining, ( ), or supports activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative**." (citing Communications Workers v. Beck, 487 U.S. 735, 745 (1988) and Ellis v. Railway Clerks, 466 U.S. 435, 448 (1984), quotations omitted).

Id. at 560. The Board affirmed the Judge's ruling in this regard. Id. at 543.

It is critical to highlight here that the United States Supreme Court in Ellis v. Railway Clerks made clear long ago that objectors may not only be charged for the direct costs of contract negotiation and administration and grievance adjustment; objectors may also be charged for expenses related to activities normally or reasonably undertaken by a union to effectuate its duties as exclusive bargaining agent:

> "the test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Under this standard, **objecting employees may be compelled to pay their fair share of not only the direct costs of negotiating and administering a collective-bargaining contract and of settling grievances and disputes, but also the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative of the employees in the bargaining unit**." (emphasis added).

Id. at 448.

In the instant case, the lobbying activity undertaken by the UNAP on behalf of bargaining unit employees in the State of Vermont and the State of Rhode Island was both germane to collective bargaining and of a kind normally or reasonably undertaken to effectuate its duties as exclusive bargaining agent.

1. The Lobbying in Vermont

The record evidence reflects that the UNAP lobbied in support of two (2) bills in the Vermont legislature in FY 2009, one related to safe patient handling, the other related to prohibiting mandatory overtime. (Tr. 22:4-9).[15] In ¶3(d) of his conclusions of law, the Judge found that the UNAP violated the Act by charging non-members for the expenses related to this lobbying activity. Decision at 7. However, the Judge did not provide any analysis whatsoever. Rather the Judge baldly concluded:

> "The [ ] two bills, which were lobbied for the health and safety of the represented employees [ ] was not germane to collective bargaining and therefore is not chargeable to the objecting nonmembers."

Decision at 6.

a. The Safe Patient Handling Bill (Jt. Ex. 13)

The safe patient handling bill recognized the need for safe patient handling measures to reduce the risk to health care workers of suffering musculoskeletal injuries while handling patients at work: "(w)ithout adequate resources such as special equipment and specially trained staff, lifting patients, whether the patients are overweight or not, increases the risk of injury to ( ) health care providers when the patient is being moved, being repositioned, or receiving other care;" "(h)ealth care workers lead the nation in work-related musculoskeletal disorders;" "(s)afe patient handling reduces injuries." Jt. Ex. 13 at 2-3. As such, the bill called for hospitals to establish a safe patient handling program pursuant to which hospitals would purchase the equipment and aids necessary to safely handle patients. Jt. Ex. 13 at 5. In addition, the bill called for hospitals to provide

[15] The UNAP spent approximately $7,500 lobbying these two (2) bills and $40 to register the lobbyist who was hired to do this lobbying. (Tr. 21:19-22, 22:2-10, 22:13-22).

training to health care workers, provided during paid work time, to train them on how to effectively use such equipment and aids to safely handle patients and reduce the risk of injury. Jt. Ex. 13 at 5.

The bill, had it passed, would have applied to Copley Hospital and Retreat Healthcare. (Tr. 94:3-21). The UNAP represents 105 registered nurses at Copley Hospital, Local 5109, and 429 professional and non-professional employees at Retreat Healthcare, Local 5086. R-1. Those bargaining unit employees do a lot of patient handling, including lifting, transferring and moving of patients as part of their job. (Tr. 95:6-8). As a result, they suffer large numbers of work related injuries. (Tr. 95:11-12). When this occurs, they suffer a loss in wages:

> Q. In the event that somebody is injured on the job and takes a Workers' Comp leave, would that result in a loss of wages or would it not?
> A. It does, because Workers' Comp does not have a dollar for dollar replacement cost for the employees. And there are also the roll ups like vacation accruals, pension contributions, things of that nature.

(Tr. 96:18-24).

Moreover, the careers of these employees are shortened by the cumulative affect of unsafe patient handling:

> "And then there's the cumulative effect of nurses, or certified nursing assistants or mental health care workers lifting, pulling and transferring patients day in and day out over time. And over time that, especially in the work areas like the medical floors, the surgical floors, where the lifting is heaviest, it shortens careers because they simply can't meet the physical demands of the job."

(Tr. 97:12-18).

As noted above, "the Board has found that certain expenditures that might reasonably be characterized as [ ] lobbying, may be chargeable where they concern matters that are germane to collective bargaining." See Carpenters Local 751 (Largo

Construction, Inc.), Advice Memorandum, Case 32-CB-5560-1 (2003), supra. Indeed, the Board has held that where, as here, expenses are incurred while lobbying regarding employee safety on the job, such expenses are chargeable. See Johnson Controls, supra, at 546.

There, the union, Transport Workers of America, AFL-CIO, Local 525, represented the mechanic and ground services employees of Johnson Control World Services, Inc. Id. at 543. Johnson Control World Services provided ground support services for the United States Air Force. Id. at 548. The union was found to have appropriately charged objectors for lobbying in opposition to the Air Force's reduction in ambulance service available on weekends and evenings, which diminished the immediate safety responsiveness available for the mechanic and ground services employees. Id. at 544-545.

b. The Mandatory Overtime Bill (Jt. Ex. 14)

The UNAP also lobbied in support of a bill that was designed to prohibit health care facilities from mandating health care workers to work overtime. Mandatory overtime occurs when an employer requires an employee to work beyond their regular hours. (Tr. 98:19-20). The bill reads in relevant part: "(n)o hospital shall require any employee to work in excess of eight hours per day, in excess of 40 hours per week, or in excess of scheduled hours." Jt. Ex. 14 at 3.

The bill, had it passed, would have applied to Copley Hospital and Retreat Healthcare. (Tr. 98:9-17). As noted above, the UNAP represents 105 registered nurses at Copley Hospital, Local 5109, and 429 professional and non-professional employees at

Retreat Healthcare, Local 5086. R-1. Mandating these employees to work overtime is particularly onerous:

> "one of the most onerous aspects of working conditions for our members in health care is the exercise of mandatory overtime. And that is, for instance, most typically an employer requires an employee to work a double shift. And as you can imagine, if you were working on a day shift for example, you come to work, you expect to work 7:00, 8:00 to 3:30 and you have to work from 7a to 11p, that's very onerous both physically from a work point of view and how it adversely affects family life or personal life. And so for our members at Retreat Healthcare and Copley Hospital, the right of an employer to impose mandatory overtime, as they do frequently, is really onerous."

(Tr. 98:23-24, 99:1-9).

Again, "the Board has found that certain expenditures that might reasonably be characterized as [ ] lobbying, may be chargeable where they concern matters that are germane to collective bargaining." See Carpenters Local 751 (Largo Construction, Inc.), Advice Memorandum, Case 32-CB-5560-1 (2003), supra. More specifically, the Board has held that where, as here, expenses are incurred while lobbying regarding overtime, such expenses are chargeable. See Johnson Controls, supra, at 546.

There, the union was found to have appropriately charged objectors for lobbying in opposition to Air Force rules that restricted the number of overtime hours bargaining unit employees could work. Id. at 544-545.

c. The objectors at Kent Hospital were not charged for these expenses.

Even if the lobbying activities described above were found to be non-chargeable, there is still no violation of the Act here. The UNAP locals in Vermont contributed more in per capita dues to the UNAP general fund in FY 2009 than they drew from the fund. In fact, the UNAP locals in Vermont contributed approximately $104,000 in per capita dues to the UNAP in FY 2009. (Tr. 114:12, R-2). In contrast, the Vermont locals drew

down significantly less than that; approximately $85,000 from the general fund that year. (Tr. 114:17). As such, the objectors at Kent Hospital were not charged for the lobbying activities in Vermont. See e.g. Teamsters Local 75 (Schreiber Foods), 349 NLRB 77 (2007).

There, the union, Teamsters Local 75, defended successfully against an allegation that they had unlawfully charged objectors in the private sector bargaining unit at Schreiber foods for extra unit organizing and other expenses the local spent on behalf of a public sector bargaining unit. Id. at 101. In particular, the union argued that there was no violation of the Act "because there was no cost to the Schreiber unit employees in representing the public sector employees because their dues and initiation fees covered the costs of representation." Id. The Administrative Law Judge (ALJ) found merit to this argument:

> "I agree with the Respondent that it did not violate the Act regarding its public-sector units because the expenses of representing these units is covered by the income (dues, initiation fees, interest, and dividend income) received from these public-sector employees. Therefore, there was no expense or charge to the Schreiber unit employees, including dissenters, for representing the public-sector employees."

Id. at 103.[16]

2. The lobbying in Rhode Island

The record evidence reflects that the UNAP lobbied in support of two (2) bills in the Rhode Island General Assembly in FY 2009. One, in evidence and marked as Jt. Ex. 7, was a retirement system bill. The other, in evidence and marked as Jt. Ex. 11, was a nursing shortage bill. In ¶3(a) and (b) of his conclusions of law, the Judge found that the UNAP violated the Act by charging non-members for the expenses related to this

[16] The Board affirmed the ALJ's decision in this regard. Id. at 77.

lobbying activity. Decision at 7. However, the Judge did not provide any analysis whatsoever. Once again, the Judge baldly concluded:

> "I find that [these bills] were not germane to the Union's collective bargaining obligations and were therefore not chargeable to the objecting nonmembers."

Decision at 6.

a. The Retirement System Bill (Jt. Ex. 7)

The UNAP lobbied in support of a bill relevant to post retirement employment that is in evidence and marked as Jt. Ex. 7.[17] The UNAP lobbied this bill on behalf of state employed nurses, who are in the State of Rhode Island bargaining unit, UNAP Local 5019. (Tr. 50:17-21). There are approximately 150 employees in that bargaining unit. R-1.

This bill was designed to allow nurses who had retired from state service, who may be employed or reemployed by the state on a per diem basis, to double the amount they could earn without reducing their pension benefit.[18] The bill reads in relevant part:

> "(a)ny retired member who retired from service as a registered nurse may be employed or reemployed, on a per diem basis, for the purpose of providing professional nursing care and/or services at a state operated facility in Rhode Island ( ). **In no event shall "part time" mean gross pay of more than twenty-four thousand dollars ($24,000) in any one calendar year. Any retired nurse who provides such care and/or services shall do so without forfeiture or reduction of any retirement benefit or allowance the retired nurse is receiving as a retired nurse ( ).**" (emphasis added).

Jt. Ex. 7 at 3.

As noted above, "the Board has found that certain expenditures that might reasonably be characterized as [ ] lobbying, may be chargeable where they concern

[17] Richard Brooks spent between 5 and 10 hours lobbying in support of this bill. (Tr. 50:15-16).
[18] Had it passed, the bill would have allowed such nurses to make twice as much as was otherwise permitted under the current law. More specifically, the bill, had it passed, would have allowed such nurses to make $24,000 in any one calendar year as opposed to just $12,000. Jt. Ex. 7 at 3.

matters that are germane to collective bargaining." See Carpenters Local 751 (Largo Construction, Inc.), Advice Memorandum, Case 32-CB-5560-1 (2003), supra. In particular, the Board has held that where, as here, expenses are incurred while lobbying regarding retirement benefits, such expenses are chargeable. See Johnson Controls, supra, at 546.

There, the union, Transport Workers of America, AFL-CIO, Local 525, was found to have appropriately charged objectors for lobbying a United States Congressman to put pressure on Unified Services Inc., a government contractor with whom the union had a collective bargaining agreement, to make timely payment on behalf of bargaining unit employees to their health and pension benefit funds. Id. at 549-550.

It is worth noting here that the objectors at Kent Hospital work in the private sector. R-1. In contrast, the bargaining unit employees in UNAP Local 5019 work in the public sector. Id. However, where, as here, there is a pooling arrangement of dues revenue, the distinction between public and private sector bargaining units when determining whether or not union expenditures are chargeable or non-chargeable is of no legal significance. See e.g. Communications Workers, Local 9403 (Pacific Bell), 322 NLRB 142 (1996), aff'd Finerty v. NLRB, 113 F.3d 1288 (1997). There, as here, the respondent union represented both public sector and private sector employees. In particular, the union there represented employees in the telecommunications industry, printing and publishing, health care and state and local governments. Id. The Board upheld the respondent union's chargeable and non-chargeable calculations, Id. at 143, even though the union did not distinguish between public and private sector bargaining units:

> "A single nationwide reduced fee is calculated for all objectors based on the Respondent's chargeable versus nonchargeable national expenditures, without regard to the particular bargaining unit in which an objector is employed. ( ) In short, **the reduced fee charged to objectors does not vary according to the objector's bargaining unit, industry, or employer**." (emphasis added).

Id. at 142-143. The D.C. Circuit affirmed the Board's decision in this regard noting: "(i)t is indisputable that, by pooling its resources on a union-wide basis, a union, which is the bargaining representative of all of its members, provides some benefit to members of the various local unions." Finerty v. NLRB, 113 F.3d 1288, 1292 (D.C. Circuit 1997).

Moreover, that the beneficiaries of this lobbying activity are retired employees does not mean that they are not employees under the National Labor Relations Act (NLRA). See e.g. Midwest Power Systems, Inc., 335 NLRB 237 (2001). There, the employer was found to have violated Sections 8(a)(5) and (1) of the Act when it implemented unilateral "changes to the future retirement medical and life insurance benefits of current bargaining unit employees."[19]

b. The Nursing Shortage Bill (Jt. Ex. 11)

The UNAP also lobbied in support of a bill that was designed to address the nursing shortage in Rhode Island.[20] Jt. Ex. 11. The bill recognized that "(t)here is a growing shortage of qualified nurses and healthcare professionals available to meet the needs of patients in healthcare facilities in Rhode Island" and that "(i)t is vital ( ) that incentives be provided to attract and retain nurses and healthcare professionals to provide service in healthcare facilities throughout the state." Jt. Ex. 11 at 1. As such, the bill calls for the establishment of a center for health professions "for the purpose of

[19] While the UNAP readily acknowledges that the employees represented by Local 5019 are public sector employees who are not covered by the NLRA, they are covered by a corresponding state collective bargaining statute. R.I.G.L. § 28-7. It is appropriate, therefore, to apply the Board's holding in Midwest

developing a sufficient, diverse, and well trained healthcare workforce," with an initial focus on the nursing shortage. Jt. Ex. 11 at 2. In particular, the bill contemplates creating "incentives ( ) to ( ) retain nurses ( ) to provide service in healthcare facilities throughout the state." Jt. Ex. 11 at 2.

The UNAP represents thousands of nurses at hospitals throughout the state of Rhode Island. R-1. UNAP lobbied in support of this bill to address the adverse impact the nursing shortage was having on the working conditions of these nurses:

> A. The shortage of registered nurses was having a severe effect on our members' working conditions. When we don't have enough nurses and we have high vacancy rates, we have a number of adverse impacts on our members. For example, nurses are sometimes asked to handle more patients than they can safely care for. They are sometimes required to float from one unit to another.
>
> Q. Can you just give a little more detail about what floating is?
>
> A. Sure. Most nurses are assigned to a particular unit, which has a specialty. They care for certain types of patients. At times when there are shortages or unfilled positions hospitals will direct nurses to float to units they don't normally work on and for which they may not feel comfortable or prepared. It's a source of concern to our members. And so we work to try to reduce the occasion of floating.
>
> Q. Anything else?
>
> A. Similarly, shift rotation. Nurses are –
>
> Q. Can you explain what that is please?
>
> A. Most nurses are hired to work on a particular shift; days, evenings, nights. But at times when there are staffing vacancies and shortages this often increases the frequency in which nurses are required to work something other that their ordinary shift. And that too is very undesirable to nurses. So by supporting this legislation to create incentives to educate, recruit and retain registered nurses we were doing our part to address the nursing shortage and reduce the impact that the nursing shortage has on our members' working conditions.

Power Systems Inc. to the instant case. Indeed, the lobbying in issue here was done on behalf of current bargaining unit employees. (Tr. 50:17-25, 51:1-5).

[20] Richard Brooks spent an hour lobbying in support of this bill. (Tr. 55:11-12).

(Tr. 55:1-25, 56:1-3).

As noted above several times above, lobbying expenditures that are germane to collective bargaining and representational activities are chargeable. See Carpenters Local 751 (Largo Construction, Inc.), Advice Memorandum, Case 32-CB-5560-1 (2003)("the Board has found that certain expenditures that might reasonably be characterized as political action, such as legislative, executive, and administrative agency lobbying, may be chargeable where they concern matters that are germane to collective bargaining and representational activities")(citing Transport Workers of America, AFL-CIO, Local 525 (Johnson Controls World Services, Inc.), 329 NLRB 543 (1999)). More precisely, lobbying with regard to terms and conditions of employment is chargeable. Johnson Controls, supra at 544-545 (Board found that union's lobbying with regard to wages, hours or terms and conditions of employment was chargeable). As, such, lobbying to reduce the incidents of floating and shift rotation is germane to collective bargaining and the kind of activity normally and reasonably undertaken by a union to effectuate its duties as exclusive bargaining representative.

IV. The Judge Should Have Dismissed The Instant Case On De Minimis Grounds

It is settled that "Regional Directors have long had the authority to dismiss allegations on de minimis grounds ( )." Quality Committee's Comprehensive Report On Quality Casehandling, at 32-33 (December 22, 2009)(citations omitted).

Even where there may be merit to a particular charge, such a charge may appropriately be dismissed where the subject violation is minor or technical in nature, where there have been no prior meritorious unfair labor practices in the past several years, and the subject conduct has minor group impact. See Memorandum GC 02-08

(September 18, 2002). See also, Memorandum GC 95-15 at 8 (August 22, 1995). Indeed, Regional Directors have the prosecutorial discretion to dismiss "where the public cost would outweigh the public benefit." See Memorandum OM 02-15 (December 5, 2001). As the Board long ago held, the limited resources of the Board should not be spent on matters which do not effectuate the policies of the Act:

> "with the ever-expanding caseload, it is more important than ever that the Board be permitted to husband its limited resources and apply them where they have maximum impact in effectuating the Act. Otherwise, time, energy and manpower are dissipated in seeking to rectify situations of no real moment while, backed up behind them, significant violations remain unremedied."

American Federation of Musicians, Local 76, 202 NLRB 620, 621 (1973)(citation omitted). See also, Bellinger Shipyards, Inc., 227 NLRB 620 (1976)("in view of the increasing need for expedition in the processing of cases, we have concluded that we ought not to expend the Board's limited resources on matters which have little or no meaning in effectuating the policies of the Act"); Wichita Eagle & Beacon, 206 NLRB 55 (1973)(minimal, isolated conduct does not furnish basis for a finding of a violation or a remedial order).

As argued above, the UNAP locals in Vermont contributed approximately $104,000 in per capita dues to the UNAP in FY 2009. (Tr. 114:12, R-2). In contrast, the Vermont locals drew down significantly less than that; approximately $85,000 from the general fund that year. (Tr. 114:17). As such, the objectors in the Kent Hospital bargaining unit were not charged for the lobbying activity in Vermont.

What remains is the amount in controversy with regard to the lobbying activities in Rhode Island. The record evidence reveals that Richard Brooks spent between 36 and

47 hours lobbying in Rhode Island.[21] At all relevant times, his salary was approximately $90,000 per year, and he worked 40 plus hours per week. (Tr. 56:4-9). As such, Richard Brooks' hourly rate was approximately $43.27 per hour.[22] The amount in controversy that was spent on lobbying activity in Rhode Island is somewhere between $1,557.62 and $2,033.69.[23] Even if all of Brooks' time spent lobbying in Rhode Island is found to be non-chargeable, the UNAP's expenditure in this regard amounts to somewhere between .15% and .19% of UNAP's expenses for the fiscal year in question.[24] This amount is clearly de minimis. See Ellis v. Brotherhood Railway, 466 U.S. 435, 450 (1984)(expenses associated with union's social activities, which amounted to .7% of overall expenditures, considered de minimis). See also Fell v. Independent Ass'n of Continental Pilots, 26 F.Supp.2d 1272, 1280 (D.Colo. 1998)(expenses related to non-germane activity, which amounted to .3% of overall expenditures, considered de minimis).

Based on the foregoing, whatever error UNAP may have made with respect to it's chargeable, non-chargeable calculations may fairly be characterized as *de minimis*, *minor or technical* in nature, and *of no real moment*. Indeed, litigating this case any further would *have little or no meaning in effectuating the policies of the Act*. Indeed, this is a case *where the public cost would outweigh the public benefit*.

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[21] Brooks spent 25-30 hours lobbying in support of the Hospital Merger Accountability Act, Tr. 45:1-3, 5-10 hours lobbying the retirement system bill, Tr. 50:15-16, 2-3 hours lobbying the hospital payments bill, Tr. 52:2-4, an hour lobbying the nursing shortage bill, Tr. 55:11-12, and 3 hours lobbying the bills in evidence and marked as Jt. Ex. 8, Jt. Ex. 9 and Jt. Ex. 10. (Tr. 65:2-23). In total, the range is 36 to 47 hours.

[22] Brooks works approximately 2,080 yours per year (40 hours per week x 52 weeks). $90,000 divided by 2,080 = $43.27.

[23] Brook's hourly rate was approximately $43.27 per hour in FY 2009. He spent between 36 and 47 hours lobbying the bills in question. 36 x 43.27 = $1,557.72. 47 x $43.27 = $2,033.69.

[24] UNAP's total expenses for FY 2009 were $1,067,233.32. J-2c. $1,557.72 divided by $1,067,233.32 = .0015. $2,033.69 divided by $1,067,233.32 = .0019. These numbers are rounded up and, therefore, do not

Lastly, by making an argument out of such a de minimis figure, the Acting General Counsel, in effect, is requiring that UNAP make its calculations as to chargeability with near absolute precision, which is not required. See Chicago Teachers Union v. Hudson, 475 U.S. 292 (19860. There, the Court determined that the information the union provided nonmembers was inadequate:

> "Instead of identifying the expenditures for collective bargaining and contract administration that had been provided for the benefit of nonmembers as well as members [ ] the Union identified the amount that it admittedly has expended for purposes that did not benefit dissenting nonmembers. An acknowledgment that nonmembers would not be required to pay any part of 5% of the Union's total annual expenditures was not an adequate disclosure of the reasons why they were required to pay their fair share of 95%."

Id. at 307-308.

However, the Court went on to say that absolute precision in the calculation of the charge to nonmembers is neither expected nor required:

> "**We continue to recognize that there are practical reasons why absolute precision in the calculation of the charge to nonmembers cannot be expected or required**. Thus, for instance, the Union cannot be faulted for calculating its fee on the basis of its expenses during the preceding year" (emphasis added).

Id. at fn 18 (citation, internal quotations omitted). See also, Abood v. Detroit Board of Education, 431 U.S. 209, 239, fn. 40 (1977)("Absolute precision in the calculation of such proportion is not, of course, to be expected or required; we are mindful of the difficult accounting problems that may arise. And no decree would be proper which appeared likely to infringe the unions' right to expend uniform exactions under the union shop agreement in support of activities germane to collective bargaining"). See also, Railway Clerks v. Allen, 373 U.S. 113, 122 (1963)(same); Chicago Teachers Union v. Hudson, 475 U.S. 292, 307 fn. 18 (1986)(same). Indeed, all that is required is that UNAP

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change when adding the $5 fee which the UNAP paid to register Mr. Brooks to lobby in Rhode Island. (Tr.

have "a reasonably accurate method of calculating chargeable fees." See Communications Workers, Local 9403 (Pacific Bell), supra at 144.

Conclusion

Lehnert, supra, and its progeny stand for the proposition that the objectors at Kent Hospital Local 5008 may be charged for activities that are undertaken on behalf of employees in other bargaining units, in other states, in other occupations and/or industries 1) so long as expenditures in that regard are made in the context of a pooling arrangement and 2) so long as those activities are otherwise chargeable. As such, the standard of review here is not to determine whether or not the lobbying activity undertaken by the UNAP was undertaken on behalf of the Kent Hospital bargaining unit, although some of it was. Rather, the standard of review here is to determine whether or not the lobbying activity in issue is germane to collective bargaining and the kind of activity normally and reasonably undertaken by an exclusive bargaining agent to effectuate its duties as such.

Here, the lobbying activity in the State of Vermont was chargeable because it was germane to collective bargaining and the kind of activity normally and reasonably undertaken by an exclusive bargaining agent to effectuate its duties as such. Notwithstanding, the objectors in the instant case were not charged for such lobbying activity because the subject Vermont locals contributed more to the UNAP general fund than they drew in the relevant fiscal year.

The lobbying activity in the State of Rhode Island was chargeable because it was germane to collective bargaining and the kind of activity normally and reasonably undertaken by an exclusive bargaining agent to effectuate its duties as such. Even if there

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22:16-18)

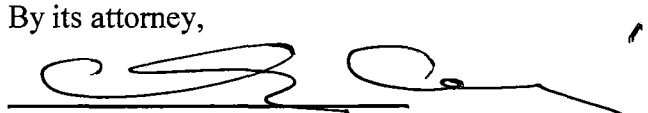
is a finding that none of the lobbying activity in Rhode Island was chargeable, the amount in controversy is de minimis and, therefore, minor and of no real moment.

WHEREFORE, Respondent United Nurses & Allied Professionals respectfully requests the Board reverse the Judge's conclusions of law as set forth in ¶3(a), (b) and (d) of his Decision and otherwise dismiss the complaint.

Respectfully submitted,

The United Nurses & Allied Professionals

By its attorney,



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CERTIFICATION OF SERVICE

I hereby certify that a copy of this brief was sent overnight mail to the Board's Office of the Executive Secretary at 1099 14th Street, N.W., Washington, D.C. 20570, by certified mail to Mr. Donald Firenze at Region 1 of the National Labor Relations Board, 10 Causeway Street, 6th floor, Boston, MA 02222-1072, and by certified mail to Mr. Mathew Muggeridge of the National Right to Work Defense Foundation at 8001 Braddock Road, Suite 600, Springfield, VA 22160, on April 26, 2011.

Betty Wheeler

Betty Wheeler, UNAP Office Manager

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